**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| In Re: DESERT LAND, LLC DESERT OASIS APARTMENTS, LLC; In Re: DESERT RANCH, LLC<br>Debtors<br>---<br>DESERT LAND, LLC; DESERT OASIS APARTMENTS, LLC; DESERT RANCH, LLC<br>Appellants,<br>v.<br>TOM GONZALES; MAKENA ENTERTAINMENT, LLC a Nevada Limited Liability Company<br>Appellee. | No. 04-16005<br>BAP No. NV-03-1255-KRyB<br>MEMORANDUM* |

Appeal from the Ninth Circuit Bankruptcy Appellate Panel
Klein, Ryan and Brandt, Bankruptcy Judges, Presiding

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Argued and Submitted October 18, 2005
San Francisco, California

Before: REINHARDT and THOMAS, Circuit Judges, and RESTANI[**], Chief Judge, United States Court of International Trade.

Desert Land, LLC, Desert Oasis Apartments, LLC, and Desert Ranch, LLC, (collectively "Desert Land") appeal the Bankruptcy Appellate Panel ("BAP") memorandum decision modifying Desert Land's second amended plan of reorganization ("settlement agreement"). We affirm the BAP's decision.

As an initial matter, Gonzales's appeal to the BAP was not moot. Under the general mootness rule, courts are prohibited from hearing an appeal when events occur that "make it impossible for the appellate court to fashion effective relief." Focus Media, Inc. v. Nat'l Broadcasting Co. (In re Focus Media, Inc.), 378 F.3d 916, 922 (9th Cir. 2004). Desert Land has not satisfied its "heavy burden" of establishing that the court cannot provide any effective relief. See id. at 923 (citation omitted). Moreover, the doctrine of equitable mootness applies only when appellants "have failed and neglected diligently to pursue their available

[**] The Honorable Jane A. Restani, Chief Judge, United States Court of International Trade, sitting by designation.

remedies to obtain a stay of the objectionable orders of the Bankruptcy Court and have permitted such a comprehensive change of circumstances to occur as to render it inequitable for [the] court to consider the merits of the appeal." Trone v. Robert Farms, Inc. (In re Roberts Farm, Inc.), 652 F.2d 793, 798 (9th Cir. 1981). Here, it was equitable for the BAP to consider Gonzales's appeal because he pursued a stay of the bankruptcy court's order and the case does not present transactions that are "complex or difficult to unwind." See Lowenschuss v. Selnick (In re Fred Lowenschuss), 170 F.3d 923, 933 (9th Cir. 1999).

Further, we hold that the BAP's modification of the reorganization plan was an appropriate remedy for the bankruptcy court's abuse of discretion. Here, the bankruptcy court included a provision in the settlement agreement providing for the subordination of a transfer fee owed to Gonzales. Yet, the record does not show that the parties agreed to include the subordination provision in the settlement agreement. Under Nevada law, a court cannot force a settlement containing terms to which the parties have not agreed. See Fury v. Special Admin. (In re estate of Violet Mae Travis), 725 P.2d 570, 571 (Nev. 1986). Therefore, we agree with the BAP that the bankruptcy court abused its discretion by including the subordination provision in the settlement agreement. Moreover, we hold that the BAP did not err by removing the subordination requirement, while preserving the

settlement agreement. See Felder v. United States, 543 F.2d 657, 671 (9th Cir. 1976) (allowing for an appellate court to enter a modified judgment rather than remanding in "[t]he interests of justice and the best interest of the parties.").

Accordingly, the BAP's decision is AFFIRMED.